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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/874,238	06/04/2001	Jens Chr. Jensenius	09011-002003	6910

1444 7590 11/17/2004

BROWDY AND NEIMARK, P.L.L.C.
624 NINTH STREET, NW
SUITE 300
WASHINGTON, DC 20001-5303

EXAMINER

SAUNDERS, DAVID A

ART UNIT PAPER NUMBER

1644

DATE MAILED: 11/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/874,238

Applicant(s)

JENSENIUS ET AL.

Examiner

David A Saunders, PhD

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 10/5/04 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 05 August 2004. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see attached.

3. ☒ Applicant's reply has overcome the following rejection(s): see attached.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☒ affidavit, b) ☒ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: 20-21, 37, 41-43.

Claim(s) rejected: 18, 19, 22, 23, 26 and 40.

Claim(s) withdrawn from consideration: _____

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____

The examiner sees no reason to enter the amendment, consider the arguments, or consider the petition under Rule 1.48(a) filed on 10/5/04. Consideration of all of these lengthy submissions would require more than a cursory review, which is all that is appropriate for consideration of after final responses.

- 1) Applicant's response of 10/27/03 filed a 1.132 In re Katz declaration to overcome a prior art rejection. This is normally a simple matter of review. Applicant's submission, on the other hand, raised more issues than it solved and required extensive considerations in response to the amendment of 10/27/03. For example, a) there was no statement under section 1001 of 18 USC, and there was no addressing of this point in the response of 10/5/04; b) the submission was inadequate in its explanations of inventorship and raised more issues than in solved; the examiner indicated that Stover might be an inventor (applicant appears to be correct in assuming that the examiner intended Willis, since it was Willis who obtained an N-terminal sequence, which provided a peptide for immunization to obtain the antibody). The examiner sees no reason to consider arguments after final to overcome these deficiencies.
- 2) From applicant's own In re Katz declaration filed 10/27/03, he should have realized that Willis should be listed as an inventor. There is thus no good reason for the examiner to consider the Rule 1.48(a) declaration now filed after final.
- 3) Also applicant's arguments are confusing as to what the meaning of amended claim 18 would be under 112, 2nd, the amended version of claim 18 would recite "human MASP-2", but at page 6, line 7 of the arguments, applicant states "claim 18 is not limited to human MASP-2." Since one does not know what the amended claim language means, it is inappropriate to enter

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the amendment after final. The purpose of the amendment is also unclear; claim 18 would be limited to "human MASP-2 but claim 19 would not.

- 4) The examiner sees no good reason to enter the amendment after final, because it should have been earlier presented. If the changes are necessary to overcome the prior art, because of inadequacies in the In re Katz declaration, then these changes should have been entered in the non-final amendment of 10/27/03 without the submission of the declaration which required undue considerations on the part of the Office.
- 5) The proposed amendment to claim 26 would overcome the 112 enablement rejection of record; this is the only change that will be entered after final.
- 6) Any inquiry concerning this communication should be directed to David A Saunders, PhD at telephone number 571-272-0849.

David A Saunders

DAVID SAUNDERS
PRIMARY EXAMINER

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